

**RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 5:12. PROCEEDINGS BY DIVISION OF CHILD PROTECTION AND
PERMANENCY**

Rule 5:12-1. Notices Regarding Placement of a Child; Form and Contents of Complaint

(a) Notices Regarding Placement of a Child. If the Division of Child Protection and Permanency ("Division") has removed a child from the home, the Division shall file with the court a notice of placement and a notice of change pursuant to subparagraphs (a)(1) and (a)(2) of this rule.

(1) Notice of Placement of Child. The Division shall provide the court with a separate notice of placement referenced in R. 5:13-3, which shall be captioned "In the matter of _____, a minor." The notice of placement shall contain the following information:

(A) county of venue,

(B) the child's address,

(C) the child's date of birth,

(D) the child's gender,

(E) the child's race,

(F) the participant number assigned to the child by the Department of Children and Families ("DCF"),

(G) the case number assigned to the family by DCF,

(H) the authority for placement,

(I) the child's date of placement,

(J) whether the placement is a repeat placement,

(K) the type of placement,

(L) the current case goal,

(M) the reasons for placement,

(N) the name and identification number of the Division local office,

(O) the name of the Division caseworker assigned to the case,

(P) the name of the Division supervisor assigned to the case,

(Q) the names, addresses, telephone numbers and relationship to the child of the parents or guardian, siblings, current caregiver, and any other persons or agencies that have an interest in, or information relating to, the welfare of the child, and

(R) the reasonable efforts that the Division has made, services offered and services provided to prevent the child's placement, or information about the specific exception to make reasonable efforts to prevent the child's placement.

(2) Notice of Change. The Division shall provide the court with a notice of change, which shall contain the child's name, the court's FC docket number, the child's DCF participant number and the family's DCF case number, the name and identification number of the Division local office, the name of the Division caseworker assigned to the case, and the name of the Division supervisor assigned to the case. The notice of change also shall identify the information that has been updated, such as:

(A) if the county of venue has changed,

(B) if the child remains in the custody of the current caregiver, the caregiver's change of address and its effective date,

(C) if there is a change in caregiver, the new caregiver's name, address, telephone number, the type of placement and the effective date of that change,

(D) if there has been a change of local office, the name and identification number of the new Division local office, the name of the new Division caseworker assigned to the case, the name of the new Division supervisor assigned to the case, and the effective date of that change,

(E) if either or both parents have changed their addresses or telephone numbers,

(F) if the current case goal has changed to a new case goal,

(G) if it is the end of a current placement and the reason, and

(H) if the child is being discharged from the Division's placement and the reason.

(3) Confidentiality of Notices. The notice of placement and notice of change shall be treated as confidential in the interest of the child and shall only be provided to the court.

(A) The Division shall provide to the law guardian assigned to represent the child a separate confidential statement of the placement, including the temporary caregiver's name, address, telephone number and relationship to the child, and any notice of change regarding the placement.

(B) On notice to all other parties, any party may request from the court the notice of placement or notice of change of placement information. The release of the notice or the information contained in it shall be made in the court's discretion. The identity and the address of the caregiver shall remain confidential and shall not be disclosed to any defendant, except for defense counsel, who shall not disclose it to any defendant.

(4) The notice of placement and notice of change shall be filed electronically through a method determined jointly by the Commissioner of Children and Families and the Administrative Director of the Courts. Only a Division caseworker may enter information into DCF's case management system, and it is that information that will be transmitted to the court. Therefore, such electronic filing shall satisfy the certification requirement set forth in R. 1:4-4(b) and will not require a DCF employee to provide a signed certification.

(b) Form and Contents of Complaint. All matters brought by the State of New Jersey, Division of Child Protection and Permanency (the "Division"), pursuant to N.J.S.A. 30:4C-1 et seq. or N.J.S.A. 9:6-8.21 et seq., shall be brought pursuant to R. 4:67 by complaint entitled in the name or names of the child or children, if known. No formal answer need be filed. The complaint shall allege (1) the name, age, and birthplace of the child in whose name the action is brought, (2) the names of the natural parents of the child, if known, (3) the names and relationship of those having custody of the child at the time the action is brought, if different from the natural parents, (4) a brief statement of the facts upon which the complainant relies, and (5) the exact nature of the relief which the complainant seeks and the statutes relied upon.

(c) Signature. The complaint shall be signed by the Attorney General or a designee, except in emergent matters, where the complaint may be signed by the Director of the Division of Child Protection and Permanency, or a designee.

(d) Emergent Relief. Temporary or preliminary relief may issue pursuant to R. 4:52-1(a). If it appears from specific facts shown by affidavit or verified complaint that the child/children's life, safety, or health will be in imminent danger before notice can be given or a hearing can be held, temporary relief may issue ex parte. The Division of Child Protection and Permanency shall make reasonable efforts to provide notice to all parties prior to making any application for temporary relief under this rule. Temporary or preliminary relief may issue on a finding that there is reasonable cause to believe a child has been subjected to or will be at risk of abuse or neglect absent such relief; provided, however, that an order for temporary removal of a child may issue only on a finding that the applicable statutory requirements of N.J.S.A. 9:6-8.28 or 9:6-8.29 have been met.

(e) Supporting Documents. All relevant reports of the Division of Child Protection and Permanency ("the Division") and any other reports of experts or other documents upon which the Division intends to rely shall be provided to the court and to counsel for all parties on the first return date of the Order to Show Cause, if then available, or as soon as practicable after they become available. The Division's case file shall also be available for inspection to the attorneys for the parties without court order. All other discovery by any party shall be permitted only by leave of court for good cause shown.

(f) Testimony. In the court's discretion, oral testimony may be taken at any stage of the proceeding at which non-consensual relief is being considered. In deciding whether to require oral testimony, the court shall determine whether there are material facts in dispute and whether the required findings can be made by a preponderance of the evidence based on reliable and relevant documents that all parties have had a full and fair opportunity to challenge. The court may rely on previous findings made in the same case, but only if the findings are based on competent evidence that has been subjected to review through cross-examination and confrontation by opposing parties, including affording them an opportunity to rebut the evidence with their own submissions.

Note: Source-R. (1969) 5:7A-1(a)(b). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended and paragraph (c) adopted June 28, 1996 to be effective September 1, 1996; paragraphs (b) and (c) redesignated as paragraphs (c) and (d), and new paragraph (b) adopted July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended, paragraph (c) caption and text amended, new paragraph (d) adopted, former paragraph (d) redesignated as paragraph (e), and new paragraph (f) adopted July 28, 2004 to be effective September 1, 2004; R. 5:12 caption amended, caption amended, new paragraph (a) caption and text adopted, former paragraph (a) redesignated as paragraph (b) and caption and text amended, former paragraph (b) deleted, and paragraphs (c), (d), (e) amended July 9, 2013 to be effective September 1, 2013.

Rule 5:12-2. Process

(a) Summons or Order to Show Cause. Process shall be by Summons or Order to Show Cause served in accordance with R. 4:4-4 no less than ten days prior to the return day therein or such other times as the court may fix or as otherwise required by law.

(b) Affidavits. Where it appears to the court by Affidavit of Diligent Inquiry filed in the action that any proper party, including a legal or putative parent, cannot be located, the court shall assume jurisdiction and proceed to summarily hear the matter. Prior thereto inquiry shall have been made of the nearest relatives of said party, and if such inquiry is unsuccessful, then of all persons known to be connected with the said party by marriage or in business, or of all persons whom the person making the inquiry has reason to believe, possess knowledge of the residence or post office address of the party. The inquiry may be made in person or letter, enclosing postage for the return of an answer, and shall describe the nature of the action that has been or is about to be commenced, and that the object of the inquiry is to give the party notice of such action and that the party may appear and be heard. The person who has made the inquiry shall file an affidavit setting forth the nature of the inquiry and its result, fully specifying the inquiry made, of what persons and in what manner, so that by the facts therein it may appear that the inquiry was made in good faith and for the purpose of effecting actual notice to the party; if the affidavit shall disclose that the inquiry has elicited information of the residence or post office address of the party, it shall state why personal service of process cannot be made and be accompanied by an affidavit of the person furnishing such information, disclosing the affiant's knowledge of such residence or post office address, if such affidavit can be obtained. If it appears that the party resides outside the state and process has been served within this state, an

affidavit must be filed stating the circumstances under which the party was served. The court in its discretion and having due regard for the expeditious disposition of the matter, may require such additional inquiries as it believes may be fruitful and serve the interest of justice.

Note: Source-R. (1969) 5:7A-2(a) (b). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended June 28, 1996 to be effective September 1, 1996.

Rule 5:12-3. Discovery

All relevant reports of the Division of Child Protection and Permanency and other reports of experts or other documents upon which the Division intends to rely shall be provided to the court and to counsel for all parties on the first return date of the Order to Show Cause, if then available, or as soon as practicable after they become available. The Division's case file shall also be available for inspection to the attorneys for the parties without court order. All other discovery by any party shall be permitted only by leave of court for good cause shown.

Note: Source-R. (1969) 5:7A-3. Adopted December 20, 1983, to be effective December 31, 1983; amended June 28, 1996 to be effective September 1, 1996; amended July 9, 2013 to be effective September 1, 2013.

Rule 5:12-4. Case Management Conference, Hearings, Trial, and Termination of Parental Rights Proceedings

(a) Prompt Disposition; Case Management Conference; Adjournments. On the return date, the court shall proceed to hear the matter forthwith. In abuse and neglect cases, the court shall request that the parents or guardians at their first appearance in court provide identifying information regarding any persons who may serve as alternative placement resources to care for the children. As soon as the litigants have retained counsel or have chosen to proceed pro se and no later than 30 days from the return date, the court shall hold a case management conference or such other proceeding as may be appropriate, and shall enter any necessary order pertaining to the safety and well-being of the child and the conduct of the case, in the form prescribed by the Administrative Director of the Courts. Thereafter, the court may on its own motion or that of any party adjourn the matter from time to time as the interest of justice requires. The court may at any time enter such interim orders as the best interests of any child under its jurisdiction may require.

(b) Hearings in Private; Testimony of Child. Hearings and trials shall be conducted in private. In the child's best interests, the court may order that a child not be present at a hearing or trial unless the child's testimony is necessary for the determination of the matter. As to permanency hearings, however, the court shall accommodate the rights of the child as provided by N.J.S.A. 30:4C-61.2. The testimony of a child may, in the court's discretion, be taken privately in chambers or under such protective orders as the court may

provide. A verbatim record shall be made of any in-chambers testimony or interview of a child.

(c) Examinations and Investigations. At any time during the pendency of the matter the court may order examinations and investigations pursuant to R. 5:3-3.

(d) Reports. The Division of Child Protection and Permanency (the "Division") shall be permitted to submit into evidence, pursuant to N.J.R.E. 803(c)(6) and 801(d), reports by staff personnel or professional consultants. Conclusions drawn from the facts stated therein shall be treated as prima facie evidence, subject to rebuttal.

(e) Written Plan. Upon a finding of abuse or neglect the court may require that the Division of Child Protection and Permanency (the "Division") file a written plan embodying the disposition terms proposed by the Division. When required to be filed, such plan shall be served upon all counsel or parties appearing pro se not less than 10 days prior to the dispositional hearing.

(f) Progress Reports. The court may, upon entry of an order of disposition, require that the Division of Child Protection and Permanency file with the court and serve upon all counsel or parties appearing pro se periodic progress reports at such intervals as the court shall require and covering such topics as the court shall designate.

(g) Foreign State Placement. In any case in which the court orders or plans to order that a child be placed with a person or agency or institution in another State, the District of Columbia, or the U.S. Virgin Islands, it shall act in compliance with the Interstate Compact on the Placement of Children, as adopted in New Jersey, N.J.S.A. 9:23-5 et seq. (the Compact). The Administrative Director of the Courts, in coordination with the Commissioner of the Department of Children and Families, as the duly designated public authority responsible for compliance with the Compact, may establish such guidelines and procedures as are necessary to ensure that all actions subject to the Compact are in compliance therewith.

(h) Permanency Hearing. A permanency hearing shall be held to provide review and court approval of the placement plan for each child in placement outside of his or her own home no later than 12 months after the child goes into such placement, or no later than 30 days after the court makes a determination that reasonable efforts to reunify the child with the family are not required, whichever is sooner. Any hearing or proceeding scheduled before the court may serve as a permanency hearing, provided that notice of that fact is given to all parties in advance.

(i) Notice of Proceedings to Care Giver. The court shall ensure that the foster parent or other person currently providing residential care to the child is given notice of all hearings and other proceedings to be held pursuant to L. 1999, c. 53. Such notice shall be sent by regular mail or hand-delivered no later than two weeks before the date of the hearing or other proceeding, except in emergent circumstances. The notice shall be in writing and shall inform the foster parent or other person providing care for the child of the date, time, and location of the hearing or other proceeding, and that he or she has a right

to appear at that time to make a statement to the court of his or her views regarding the case and the interests of the child. The notice shall further state that, in accordance with law, such person is not made a party to the case and that he or she may not be permitted to be present in the courtroom except for purposes of making a statement to the court. The court, or the child placement review board acting on behalf of the court in a matter before it, may provide notice to any other interested person for good cause in the interest of the child.

(j) Termination of Parental Rights Proceedings; Exhibits. The following procedures shall apply to every termination of parental rights matter filed by the Division of Child Protection and Permanency:

(1) The Division shall submit to the court no later than 5 days before the start of the trial two hard copies of all trial exhibits.

(2) The Division shall append to its trial exhibits a completed evidence list in a form prescribed by the Administrative Director of the Courts.

(3) If authorized by the court, the Division may submit to the court no later than 5 days before the start of the trial its exhibits in an electronic format prescribed by the Administrative Director of the Courts.

(4) In the event that no appeal is filed, the court shall retain exhibits for a minimum of 90 days after the entry of the final judgment. Upon the filing of an appeal, the court shall retain the exhibits until the final disposition of the appeal.

Note: Source-R. (1969) 5:7A-4. Adopted December 20, 1983, to be effective December 31, 1983; paragraphs (e) and (f) adopted November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b) amended June 28, 1996 to be effective September 1, 1996; paragraph (g) adopted July 10, 1998 to be effective September 1, 1998; new paragraphs (h) and (i) adopted July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; note that Appendix X-A previously referenced in paragraph (a) also deleted July 28, 2004 to be effective September 1, 2004; paragraph (d) amended, and captions added to paragraphs (e), (f), and (g) June 15, 2007 to be effective September 1, 2007; paragraph (g) amended July 16, 2009 to be effective September 1, 2009; caption amended, new paragraph (j) adopted June 26, 2012 to be effective September 4, 2012; effective date of June 26, 2012 amendments changed to November 5, 2012 by order of August 20, 2012; paragraphs (d), (e), (f) and (j) amended July 9, 2013 to be effective September 1, 2013; paragraph (b) amended July 27, 2015 to be effective September 1, 2015.

Rule 5:12-5. Bond

The court may require any person under its jurisdiction to give a cash deposit or surety bond in such form and sufficiency as the court orders to secure the faithful performance of the terms of any judgments or orders.

Note: Source-R. (1969) 5:7A-7. Adopted December 20, 1983, to be effective December 31, 1983.

Rule 5:12-6. Matters Involving Law Enforcement

(a) Visitation During Pendency of Related Criminal Action. When a criminal complaint has been filed against a parent or guardian arising out of the same incident as a Division of Child Protection and Permanency ("Division") action pursuant to R. 5:12, the Family Part shall determine the nature and scope of parental or guardian visitation, if any, as follows:

(1) On scheduling any hearing at which visitation conditions are to be imposed or modified, the court shall provide notice to the county prosecutor and counsel representing the parent or guardian in the criminal prosecution, as well as to all counsel and parties in the Division matter.

(2) Prior to any hearing, the court shall issue an appropriate protective order governing disclosure of confidential Division records consistent with N.J.S.A. 9:6-8.10a.

(3) A copy of any order governing such visitation shall be transmitted by the Family Part to the Law Division.

(4) Any application for modification of a visitation order shall be made to the Family Part, on notice to the same parties and counsel as required for notice of a hearing pursuant to (1).

(b) Information Regarding Criminal Investigation. If there is a criminal investigation of an incident that is the basis of a Division of Child Protection and Permanency ("Division") action pursuant to R. 5:12, the Division may request that the prosecutor provide any relevant information for use in the action. If the Division and the prosecutor are unable to reach an agreement on what information is to be provided, either may request the Assignment Judge to assign a judge to assist in the resolution of the matter. The judge assigned shall conduct a conference without delay. Notice of the conference shall be given to the prosecutor and to all parties to the Division action. The court shall not order the release of pre-indictment information without the agreement of the prosecutor. No rights or privileges that may otherwise exist are affected by this dispute resolution procedure.

Note: Adopted June 15, 2007 to be effective September 1, 2007; paragraphs (a) and (b) amended July 9, 2013 to be effective September 1, 2013.

Rule 5:12-7. Claims of Ineffective Assistance of Counsel

Claims of ineffective assistance of trial counsel shall be raised exclusively on direct appeal of a final judgment or order. The matter shall proceed expeditiously in accordance with R. 2:9-1(c) and R. 2:10-6.

Note: Adopted July 16, 2009 to be effective September 1, 2009.